



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 04/20/99

AGENDA ITEM 8

WORK SESSION ITEM _____

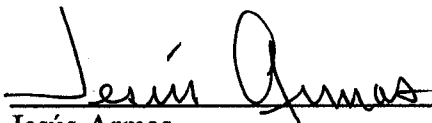
TO: Mayor and City Council
FROM: City Manager
SUBJECT: Assembly Bill 425: Check Cashing Practices

This item appears on the agenda at the request of Councilmember Olden Henson.

Assembly Bill 425, a copy of which is attached, has been introduced by Assemblymember Ellen Corbett. Briefly, as proposed, this legislation amends current law as it pertains to businesses engaged in the practice of cashing checks. Among other things, the proposed legislation establishes a limit on the fees consumers may be charged for this service.

The League of California Cities has not taken a position on AB 425. Locally, it is our understanding the County has taken a position in support of the legislation.

If the Council wishes to take a position on AB 425, it is recommended that the Council authorize the Mayor to send a letter expressing the Council's position to the appropriate state officials.


Jesús Armas

Attachment: Exhibit 1 - Assembly Bill 425

ASSEMBLY BILL

No. 425

Introduced by Assembly Member Corbett

February 12, 1999

An act to amend ~~Section~~ *Sections 1789.33 and 1789.35* of the Civil Code, relating to consumers.

LEGISLATIVE COUNSEL'S DIGEST

AB 425, as amended, Corbett. Consumers: check cashing.

~~Existing law regulates the fees that may be charged for check cashing services.~~

~~This bill would make a technical, nonsubstantive change to this provision.~~

Existing law regulates the practices of, and fees charged by, check cashing services in certain transactions where a check casher agrees to defer the deposit of a personal check written by a customer. In those transactions, the check casher is required, among other things, to disclose the total amount of fees charged for the deferred deposit in dollars and as an annual percentage rate and is prohibited from entering into a deferred deposit agreement with a customer while an earlier agreement remains in effect. Existing law provides that willful violation of certain of these requirements is a misdemeanor.

This bill would provide that the total amount of fees charged in a deferred deposit transaction, when expressed as an annual percentage rate, shall not exceed 24%; would

prohibit a check casher from entering into more than 6 deferred deposit transactions in a 12-month period with the same customer; and would prohibit repayment, refinancing, or consolidation of one deferred deposit transaction with another by the same, or a related, check casher, as specified. Willful violation of these requirements would be a misdemeanor and, by expanding an existing crime, the bill would impose a state-mandated local program. The bill would also direct the Department of Justice to conduct a feasibility study, and to report to the Governor and Legislature by a specified date, relating to computer tracking of deferred deposit transactions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1789.33 of the Civil Code is
2 amended to read:
3 1789.33. (a) A check casher may defer the deposit of
4 a personal check written by a customer for up to 30 days,
5 pursuant to the provisions of this section. The face
6 amount of the check shall not exceed three hundred
7 dollars (\$300). Each deferred deposit shall be made
8 pursuant to a written agreement that has been signed by
9 the customer and by the check casher or an authorized
10 representative of the check casher. The written
11 agreement shall contain a statement of the total amount
12 of any fees charged for the deferred deposit, expressed
13 both in United States currency and as an annual
14 percentage rate (APR), which annual percentage rate
15 shall not exceed 24 percent. The written agreement shall
16 authorize the check casher to defer deposit of the
17 personal check until a specific date not later than 30 days

1 from the date the written agreement was signed and
2 executed. The written agreement shall not permit the
3 check casher to accept collateral.

4 (b) A customer who enters into a deferred deposit
5 agreement and offers a personal check to a check casher
6 pursuant to that agreement shall not be subject to any
7 criminal penalty for the failure to comply with the terms
8 of that agreement.

9 (c) *A check casher shall not enter into more than six*
10 *agreements for a deferred deposit of a personal check*
11 *pursuant to this section with the same customer during*
12 *any consecutive 12-month period.*

13 (d) *The Department of Justice shall conduct a study to*
14 *determine the feasibility of a computerized tracking*
15 *system for individuals who enter into deferred deposit*
16 *transactions pursuant to this section and shall report to*
17 *the Governor and the Legislature regarding the results of*
18 *that study on or before January 1, 2001.*

19 SEC. 2. Section 1789.35 of the Civil Code is amended
20 to read:

21 1789.35. (a) A check casher shall not charge a fee for
22 cashing a payroll check or government check in excess of
23 3 percent if identification is provided by the customer, or
24 3.5 percent without the provision of identification, of the
25 face amount of the check, or three dollars (\$3),
26 whichever is greater. Identification, for purposes of this
27 section, shall be limited to a California driver's license, a
28 California identification card, or a valid United States
29 military identification card.

30 (b) A check casher may charge a fee of no more than
31 ten dollars (\$10) to set up an initial account and issue an
32 optional identification card for providing check cashing
33 services. A replacement optional identification card may
34 be issued at a cost not to exceed five dollars (\$5).

35 (c) A check casher shall provide a receipt to the
36 customer for each transaction.

37 (d) Subject to the limitations of Section 1789.33, a
38 check casher may charge a fee for cashing a personal
39 check, as posted pursuant to Section 1789.30, for
40 immediate deposit in an amount not to exceed 12 percent

1 of the face value of the check, or for deferred deposit in
2 an amount not to exceed 15 percent of the face value of
3 the check.

4 (e) A check casher shall not enter into an agreement
5 for a deferred deposit with a customer during the period
6 of time that an earlier written agreement for a deferred
7 deposit for the same customer is in effect. *A deferred*
8 *deposit transaction shall not be repaid, refinanced, or*
9 *consolidated by or with the proceeds of another deferred*
10 *deposit transaction or similar arrangement made by the*
11 *same check casher or any person related to the check*
12 *casher by common ownership or control, or in whom the*
13 *check casher has a financial interest.*

14 (f) A check casher who enters into a deferred deposit
15 agreement and accepts a check passed on insufficient
16 funds, or any assignee of that check casher, shall not be
17 entitled to recover damages in any action brought
18 pursuant to, or governed by, Section 1719.

19 (g) For a transaction pursuant to Section 1789.33, a fee
20 not to exceed fifteen dollars (\$15) may be charged for the
21 return of a dishonored check by a depository institution.
22 The fee may be collected by a check casher who holds a
23 valid permit issued pursuant to Section 1789.37, when
24 acting under the authority of that permit.

25 (h) No amount in excess of the amounts authorized by
26 this section *or Section 1789.33* shall be directly or
27 indirectly charged by a check casher pursuant to a
28 deferred deposit agreement.

29 (i) Any person who violates any provision of this
30 section *or Section 1789.33* shall be liable for a civil penalty
31 not to exceed two thousand dollars (\$2,000) for each
32 violation, which shall be assessed and recovered in a civil
33 action brought in the name of the people of the State of
34 California by the Attorney General in any court of
35 competent jurisdiction. Any action brought pursuant to
36 this subdivision shall be commenced within four years of
37 the date on which the act or transaction upon which the
38 action is based occurred.

39 (j) A willful violation of this section is a misdemeanor.

1 (k) Any person who is injured by any violation of this
2 section or Section 1789.33 may bring an action for the
3 recovery of damages, an equity proceeding to restrain
4 and enjoin those violations, or both. The amount awarded
5 may be up to three times the damages actually incurred,
6 but in no event less than the amount paid by the
7 aggrieved consumer to a person subject to this section. If
8 the plaintiff prevails, the plaintiff shall be awarded
9 reasonable attorney's fees and costs. If a court determines
10 by clear and convincing evidence that a breach or
11 violation was willful, the court, in its discretion, may
12 award punitive damages in addition to the amounts set
13 forth above.

14 *SEC. 3. No reimbursement is required by this act*
15 *pursuant to Section 6 of Article XIII B of the California*
16 *Constitution because the only costs that may be incurred*
17 *by a local agency or school district will be incurred*
18 *because this act creates a new crime or infraction,*
19 *eliminates a crime or infraction, or changes the penalty*
20 *for a crime or infraction, within the meaning of Section*
21 *17556 of the Government Code, or changes the definition*
22 *of a crime within the meaning of Section 6 of Article*
23 *XIII B of the California Constitution.*